

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2014-144-C

In re:)	
)	
Application of Airespring, Inc.)	
For a Certificate of Public Convenience)	
And Necessity to Provide Local Exchange)	MOTION FOR
Telecommunications Services and)	EXPEDITED REVIEW
for local service offerings to be regulated)	
in accordance with procedures authorized)	
for NewSouth Communications in Order)	
No. 98-165 in docket No. 97-467-C		

The Applicant Airespring, Inc. ("Airespring" or "Company") hereby moves pursuant to S. C. Code Ann. §58-9-280, 26 S.C. Ann. Regs. 103-840, and other applicable rules of practice and procedure of the South Carolina Public Service Commission ("Commission") that the Commission perform an expedited review of Airespring's Application for a Certificate of Public Convenience and Necessity for Authority to Provide Local Exchange Service ("Application") in the State of South Carolina and for local service offerings to be regulated in accordance with procedures authorized for NewSouth Communications in Order No. 98-165 in docket No. 97-467-C. Airespring requests that the Commission use its discretionary authority to informally dispose of the proceeding without holding a formal hearing. In support of this motion, Airespring would show the following:

FACTUAL BACKGROUND

1. As described in detail in the Application, Airespring seeks the Commission's authority to provide resold local exchange services in the State of South Carolina in accordance with procedures authorized for NewSouth Communications in Order No. 98-165 in docket No. 97-467-C

2. Airespring published the notice of filing of the application as required by the Commission. The deadline for filing petitions to intervene in the proceeding was May 12, 2014. The South Carolina Telephone Coalition ("SCTC") intervened in this proceeding. However, SCTC does not object to the granting of the Applicant's certificate of public convenience and necessity to Airespring provided that Airespring stipulate and agree, with certain exceptions, to provide service only to customers located in non-rural local exchange company service areas in South Carolina. Airespring has agreed to this stipulation which was filed of record May 19, 2014.

3. The Office of Regulatory Staff ("ORS") has filed a letter seeking permission for it to withdraw from the hearing scheduled for June 23, 2014. By Directive dated June 11, 2014, the Hearing Officer granted the ORS request to be permitted to withdraw from the hearing. ORS does not oppose the application or this motion for expedited review. No other comments or petitions to intervene have been filed.

4. Airespring's financial, technical, and managerial qualifications are more fully described in the verified testimony of Rod Rummelsburg which is attached as **Exhibit A.**

5. Airespring was authorized by Order No. 2003-721 in Docket No. 2003-208-C to provide long distance telecommunications services in South Carolina.

ARGUMENT

6. Airespring filed its application pursuant to S.C. Code Ann. §58-9-280 seeking a certificate of Public Convenience and Necessity to provide interexchange telecommunications services. Section 58-9-280(B) provides that “[a]fter notice and an *opportunity to be heard*, the Commission may grant a certificate to operate as a telephone utility...” S.C. Code Ann. § 58-9-280(B). Notice has been published as required by the Commission and any interested party, including Airespring has thus had an *opportunity* for a hearing. Therefore, the Commission has satisfied the statutory requirements. Airespring submits that the Commission now has the discretion under Section 58-9-280(B) to consider Airespring’s application without a full, evidentiary hearing.

7. Airespring seeks expedited review of its application on the grounds that (1) the South Carolina Administrative Procedures Act (“APA”) grants the Commission flexibility regarding hearings in contested matters, (2) due process requirements are satisfied if Airespring waives the right to a hearing when there is no disputed material issue of fact, and (3) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection required under the APA.

8. Administrative agencies in South Carolina “are required to meet minimum standards of due process. Due process is flexible and calls for such protections as the particular situation demands.” *Stone River Environmental Protection Association v. S.C. Dept. of Health and Environmental Control*, 406 S.E.2d 340, 342 (S.C. Sup. Ct. 1992); *Anonymous v. State Board of Medical Examiners*, 473 S.E.2d 870 (S.C. Ct. App. 1996) *citing Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

The APA provides that “in a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days.” S.C. Code Ann. § 1-23-320(a). The APA defines “contested case” as “a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” S.C. Code Ann. § 1-23-310(2). The provisions of the APA ensure that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases. “Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.” S.C. Code Ann. § 1-23-320(f).

Notice of the Company’s application was published as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided as required by the APA and S.C. Code Ann. Section 58-9-280(B). The ORS does not object to the motion and no other parties have intervened.

Airespring is currently certified to provide long distance telecommunication services in South Carolina and has been offering long distance telecommunication services since it received its certificate. Therefore, the Commission is aware of the technical, managerial and financial background relied upon by Airespring in its application. Airespring respectfully requests that the Commission apply Section 1-23-320(f) of the APA and informally dispose of the proceeding without requiring a formal hearing.

9. Holding a formal hearing “is appropriate where adjudicative facts involving the particular parties are at issue. Conversely, an agency may ordinarily dispense with hearing where there is no genuine dispute as to a material issue of fact.” 2 Am. Jur.2d *Administrative Law* §298. In addition, “the right to a hearing...may be waived.” 2 Am. Jur.2d *Administrative Law* §296.

Airespring is requesting the hearing be waived and there are no intervenors opposing its certification in the proceeding. Airespring’s financial, technical and managerial qualifications are outlined in the testimony of Mr. Rummelsburg. The Commission has previously held a hearing concerning Airespring’s fitness to provide telecommunications services in the state. Therefore, there is no material issue of fact to be decided at the formal hearing.

10. Notice and the opportunity to present written evidence would satisfy due process requirements for the Airespring application. Airespring has presented the information required under S.C. Code § 58-9-280(B) in its application and the testimony of Mr. Rummelsburg. Since the ORS does not object to the motion and there is no other intervention, Airespring asserts that a full evidentiary hearing on its application is unnecessary.

WHEREFORE, Airespring Inc. respectfully requests that the Commission cancel the hearing scheduled on this matter and issue Airespring, Inc. a Certificate of Public Convenience and Necessity for Authority to Provide Resold Local Exchange Service in

the State of South Carolina and for local service offerings to be regulated in accordance with procedures authorized for NewSouth Communications in Order No. 98-165 in docket No. 97-467-C.

Respectfully submitted this 12th day of June, 2014.



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Columbia, SC 29201
803-771-0555

Attorney for Airespring, Inc.

EXHIBIT A

BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-144-C

In the Matter of)
The Application of)
Airespring, Inc.)
for a Certificate of Public) DIRECT TESTIMONY
Convenience and Necessity to) OF ROD RUMMELSBURG
Provide Local Exchange)
Telecommunications Services and)
for local service offerings to be regulated)
in accordance with procedures authorized)
for NewSouth Communications in Order)
No. 98-165 in docket No. 97-467-C)

I. Introduction

1. Q. Please state your name and business address.
- A. My name is Rod Rummelsburg. My business address is 6060 Sepulveda Blvd., 2nd Floor, Van Nuys, California 91411.
2. Q. By whom are you employed and in what capacity?
- A. I am Airespring, Inc.'s ("Airespring" or "Applicant") General Counsel.
3. Q. Please give a brief description of your background and experience in business and telecommunications.
- A. My background includes general business law with an emphasis on telecommunications and intellectual property. As General Counsel of Airespring, Inc., a telecommunications company, I am involved in contract negotiations, regulatory review, and business dispute resolution. I have been General Counsel at

1 Airespring since October 2011. Prior to this I served as in-house counsel to two
2 other telecommunications companies, one reselling telecom services domestically
3 and the other supplying VoIP and IP services internationally to customers in
4 approximately 125 countries. Attached please find an extensive list of my practice
5 areas and education history.

6 4. **Q. What is the purpose of your testimony?**

7 A. The purpose of my testimony is to describe the nature of Airespring's proposed
8 service offering within the State of South Carolina, and to demonstrate its financial,
9 managerial, and technical ability to provide the telecommunications services for
10 which authority is sought herein.

11 5. **Q. Do you wish to incorporate by reference any documents into your testimony?**

12 A. Yes. I wish to incorporate by reference the underlying Application filed in this
13 proceeding and its associated attachments.

14 **II. The Business of Airespring, Inc.**

15 6. **Q. Has Airespring registered to do business in South Carolina?**

16 A. Yes. Airespring is a Delaware corporation that has received authorization to transact
17 business within the State of South Carolina. A copy of Airespring's Certificate of
18 Incorporation is attached to the Application as Exhibit A and a copy of the document
19 of authorization from the State of South Carolina is attached to that Application as
20 Exhibit B.
21

1 7. **Q. Please describe the services Airespring intends to provide within the State of**
2 **South Carolina.**

3 A. Airespring proposes to offer local exchange services. Such services will be
4 provided by utilizing the facilities of incumbent local exchange carriers ("LECs")
5 and/or other facilities-based carriers. The company has no plans to install
6 facilities in the State of South Carolina. Airespring expects to offer a full array of
7 local exchange services to business customers, including the following:

- 8
9 a. Resold Local Exchange Services that will enable customers to originate and
10 terminate local calls in the local calling area served by other LECs.
11 b. Resold Switched local exchange services, including basic service, trunks,
12 carrier access, and any other switched local services that currently exist or
13 will exist in the future.
14 c. Non-switched local services (e.g., private line) that currently exist or will
15 exist in the future.
16 d. Centrex and/or Centrex-like services that currently exist or will exist in the
17 future.
18 e. Digital subscriber line, ISDN, and other high capacity services.
19 f. Voice over internet protocol services.
20 g. High speed internet service (broadband/data).

21 Airespring will provide local exchange through the use of unbundled network
22 elements utilizing the facilities of the existing LECs or underlying carriers that
23 presently serve South Carolina.

24 Applicant is committed to providing access to a local operator, directory
25 assistance, 911 services, and dual relay services. Applicant is also willing to
26 accept its obligations to collect 911 and dual relay service surcharges from its
27 local exchange customers, and to remit those funds to the appropriate authorities.

28 8. **Q. What carrier will Airespring utilize as its underlying carrier for services in**
29 **South Carolina?**

30 A. Airespring is currently negotiating an interconnection agreement with AT&T South
31 Carolina ("AT&T") to provide local service.
32

1 9. Q. Does Airespring have authorization to provide interexchange and/or local
2 exchange telecommunications services in any other state?

3 A. Yes. Airespring is currently authorized to provide interexchange and/or local
4 exchange service in Arizona, Alabama, Arkansas, California, Colorado,
5 Connecticut, District of Columbia, Delaware, Florida, Georgia, Idaho, Illinois,
6 Indiana, Iowa, Kansas, Maryland, Louisiana, Massachusetts, Michigan,
7 Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire,
8 New Jersey, New York, New Mexico, North Carolina, North Dakota, Ohio,
9 Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina (see Docket
10 No.2003-208-C, Dated December 12, 2003), South Dakota, Tennessee, Texas,
11 Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

12 10. Q. Has Airespring ever had an application for a certificate of public convenience
13 and necessity denied?

14 A. No.

15 11. Q. Does Airespring intend to file a tariff with the Commission?

16 A. Yes. A local exchange price list is attached as Exhibit E to its Application in this
17 proceeding that it will modify as necessary in order to meet the Commission's
18 requirements. We believe Airespring's Tariff and price list will comport with all
19 Orders, Rules, and Regulations of the Commission.

20 12. Q. Will Airespring comply with the Commission's orders regarding the provision
21 of local services?

22 A. Yes. Airespring will at all times provide and market services in accordance with
23 current Commission policies and will attempt to comply with the terms of that order
24 in every respect possible.
25
26

1 13. **Q. Has Airespring provided any intrastate telecommunications services within the**
2 **State of South Carolina?**

3 A. No, it has not.

4 14. **Q. What rates will Airespring charge upon receipt of certification?**

5 A. Airespring will charge the tariffed rates approved by the Commission.

6 15. **Q. How will Airespring market services in South Carolina?**

7 A. Airespring intends to market its services via direct sales by Airespring employees.

8 III. Managerial, Technical and Financial Qualifications

9 16. **Q. Does Airespring have sufficient managerial, technical, and financial resources**
10 **and ability to provide the telecommunications services proposed in its**
11 **Application?**

12 A. Yes. Airespring has sufficient technical, financial, and managerial resources and
13 ability to provide the telecommunications services for which authority is sought
14 herein. Airespring's personnel represent a broad spectrum of business and technical
15 disciplines, possessing many years of individual and aggregate telecommunications
16 experience.

17 The qualifications and experience of Airespring's key management team are
18 discussed on Exhibit D which is attached to our Application in support of Applicant's
19 managerial and technical ability to provide the services for which authority is sought
20 herein.

21 17. **Q. How does Airespring handle customer service requests?**

22 A. Airespring's customer service representatives are available to assist its customers
23 and will promptly respond to all customer inquiries. Customers may call (888)
24 389-2899 or a local number. The applicable toll free or local number(s) will be
25 printed on customers' monthly billing statements.

1 Alternately, customers wishing to communicate with Airespring customer service
2 representatives in writing may send written correspondence to Airespring at:

3
4 Airespring, Inc.
5 ATTN: Customer Service
6 6060 Sepulveda Blvd.
7 Van Nuys, California 91411

8 Airespring's customer service representatives are prepared to respond to a broad
9 range of service matters, including inquiries regarding: (1) the types of services
10 offered by Airespring and the rates associated with such services; (2) monthly
11 billing statements; (3) problems or concerns pertaining to a customer's current
12 service; and (4) general service matters.

13 18. **Q. Please describe the financial condition of Airespring.**

14 A. In support of Airespring's financial ability to provide the services sought herein,
15 Profit & Loss for the period ending December 31, 2013 and Balance Sheet as of
16 December 31, 2013, were submitted as Exhibit C to its Application.

17 **IV. Public Interest**

18 19. **Q. How will residents of South Carolina benefit from Airespring's services and**
19 **presence in South Carolina?**

20 The Commission's grant of this certificate is in the public interest because consumers
21 of telecommunications services within the Applicant's service territory will receive
22 increased choice, improved quality of service, and heightened opportunities to obtain
23 improved technology in the homes and businesses. Market incentives for new and
24 old telecommunications providers in South Carolina will be improved greatly
25 through an increase in the diversity of suppliers and competition within the local
26 exchange telecommunications market. Consistent with the Commission's intent to
27 aid in the development of a competitive telecommunications environment in South

1 Carolina, the granting of a certificate of authority to provide local exchange service
2 will offer increased efficiency to the State's telecommunications infrastructure
3 through greater reliability of services and an increase in competitive choices.

4 20. Q. **Has the Company ever been the subject of an investigation by any state**
5 **Regulatory body or by the FCC?**

6 A. On December 27, 2012, the Iowa Consumer Advocate Division of the Department
7 of Justice filed with the Iowa Utilities Board a request for formal proceeding
8 based on a complaint filed by the Rehabilitation Center of Allison, Iowa ("RCA")
9 stating it was unable to receive telephone calls and faxes from the Shell Rock
10 Clinic in Shell Rock, Iowa, and the Waverly Health Center in Waverly, Iowa.
11 The complaint was issued against Airespring, Inc. ("Airespring") as well as
12 DuMont Telephone Co., Iowa Network Services, Inc., Qwest Corporation, d/b/a/
13 CenturyLink.

14 On February 3, 2014, Airespring filed a motion to withdraw from the case
15 due to the fact RCA, Shell Rock Clinic, and the Waverly Health Center had never
16 been customers of Airespring for local, long distance or facsimile
17 telecommunications services. Airespring moved that it not participate further in
18 this proceeding. No parties associated with the complaint case objected to
19 Airespring's withdrawal and it was granted on February 5, 2014.

20 Airespring has otherwise not been the subject of an investigation.

21 21. Q. **Will the Company agree to abide by and comply with Commission Rules and**
22 **Regulations and Commission Orders in its operations in South Carolina?**

23 A. Yes.
24

1 20. **Q. Does this conclude your testimony?**

2 A. Yes. I would like to thank the Commission for this opportunity to provide
3 information relevant to Airespring, Inc.'s Application and am ready to provide any
4 additional information that the Commission may need in making its decision.

Rod Rummelsburg

Background and Experience

Practice Areas

- Telecommunications
- Civil Litigation
- Complex Litigation
- Business Litigation
- Entertainment Litigation
- Corporate Law
- Business Law
- Insurance
- Intellectual Property
- Patents
- Copyrights
- Trademarks
- Arbitration
- Alternative Dispute Resolution


University	University of California at Los Angeles, B.A., 1979; Loyola Marymount University, M.S., 1981
Law School	Loyola Law School, J.D., 1998
Admitted	1999, California; registered to practice before U.S. Patent and Trademark Office
Memberships	Los Angeles County and American Bar Associations; State Bar of California
Biography	Phi Delta Phi. Member, Loyola of Los Angeles International and Comparative Law Review.
ISLN	916690227

State of California

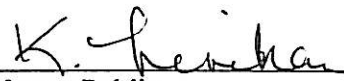
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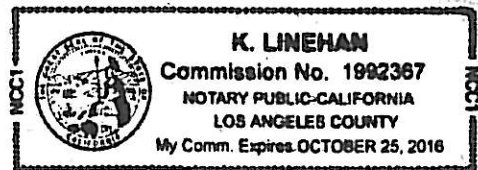
AFFIDAVIT

I, Rod Rummelsburg, first being duly sworn upon oath depose and say that I am General Counsel for Airespring, Inc., the Applicant, and that I have read the above and foregoing prefiled testimony by me subscribed and know the contents thereof, which testimony was filed in support of Airespring, Inc.'s Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services and that said contents are true in substance and in fact, except as to matters stated upon information and belief, and as to those, I believe the same to be true.


Rod Rummelsburg
General Counsel

Sworn to and subscribed before me
this 6 day of June, 2014.


Notary Public



My Commission Expires: Oct 25, 2016